No. 01-780

In The

Supreme Court of the United States

WILLIAM H. WRIGLEY,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

Supreme Court, U.S.
FILED
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On Petition For Writ Of Certiorari
To The Court Of Appeals
Of The State Of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER IT IS FLATLY CONTRARY TO THIS COURT'S BINDING PRECEDENT IN *CITY OF INDIANAPOLIS V. EDMOND*, FOR AN APPELLATE COURT TO DETERMINE THE PURPOSE OF AN INDIVIDUAL POLICE CHECKPOINT TO BE CONSTITUTIONALLY PERMISSIBLE, BASED SOLELY ON THE BELIEF OF A FIELD OFFICER ACTING AT THE SCENE, DESPITE EVIDENCE THAT THE CHECKPOINT WAS PART OF A GENERAL CRIME CONTROL PROGRAM.

II. WHETHER A CONFLICT AMONG THE DECISIONS OF APPELLATE COURTS OF THE DIFFERENT STATES, IN THE APPLICATION OF *EDMOND* TO NEARLY IDENTICAL FACTS, SHOULD BE RESOLVED BY THIS COURT.

11/29/01 THU 17:32 FAX 402 342 5440 COCKLE PRINTING 005

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	4
I. THE GEORGIA COURT OF APPEALS' DECISION IS FLATLY CONTRARY TO THIS COURT'S CONTROLLING PRECEDENT IN *CITY OF INDIANAPOLIS V. EDMOND*	4
A. THE COURT OF APPEALS' DECISION IGNORES THIS COURT'S HOLDING THAT CHECKPOINTS CANNOT BE SET UP AS PART OF A PROGRAM WHOSE PRIMARY PURPOSE IS GENERAL CRIME CONTROL	4
B. A POTENTIALLY PERMISSIBLE *SECONDARY* PURPOSE OF THE ISOLATED CHECKPOINT DOES NOT UNDERCUT THE IMPERMISSIBLE PRIMARY PURPOSE OF THE CHECKPOINT PROGRAM	6
II. THE CONFLICT AMONG STATE COURTS REGARDING THE APPROPRIATE APPLICATION OF *EDMOND* TO NEARLY IDENTICAL FACTS SHOULD BE RESOLVED	7
CONCLUSION	9

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 006

TABLE OF CONTENTS – Continued

Page

APPENDIX A .....App. 1

APPENDIX B.....App. 13

APPENDIX C.....App. 14

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 007

TABLE OF AUTHORITIES

Page

U.S. Supreme Court Cases

Arkansas v. Sullivan, ___ U.S. ___, 121 S.Ct. 1876 (2001) 10

Chandler v. Miller, 520 U.S. 305, 117 S.Ct. 1295 (1997) 6

City of Indianapolis v. Edmond, 531 U.S. 32, 121 S.Ct. 447 (2000) ..... *passim*

Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1291 (1979) 6

Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S.Ct. 2481 (1990) 6

State Court Cases

Burns v. Commonwealth, 541 S.E.2d 872 (Va. 2001) 8

Davis v. State, 788 So.2d 1064 (Fla. 2001) 7, 8, 9

Commonwealth v. Yadstrop, 768 A.2d 318 (Pa. 2001), *aff'g* 738 A.2d 1059 (1999) 8

People v. McIntosh, 738 N.E.2d 787 (N.Y. 2000), *rev'd* 755 N.E.2d 329 (2001) 9

State v. Cardenas-Alvarez, 25 P.3d 225 (N.M. 2001), *aff'g* 995 P.2d 492 (1999) 8

State v. Lidster, 747 N.E.2d 419 (Ill. 2001) 8

State v. Orr, 745 N.E.2d 1036 (Ohio 2001) 8, 9

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 008

PETITION FOR A WRIT OF CERTIORARI

The Georgia Court of Appeals handed down an opinion in the instant case that flatly disregards this Court's decision in *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000). Accordingly, this Court should accept this petition and summarily vacate or reverse the decision of the Georgia Court of Appeals.

OPINIONS BELOW

The opinion of the Georgia Court of Appeals is reported at *Wrigley v. State*, 248 Ga.App. 387, 546 S.E.2d 794 (2001), and attached as Appendix A of this Petition.

The denial of Wrigley's petition for certiorari by the Georgia Supreme Court is attached as Appendix B of this Petition.

The denial of Wrigley's Motion for Reconsideration by the Georgia Supreme Court is attached as Appendix C of this Petition.

JURISDICTION

The judgment of the Georgia Court of Appeals was entered on March 2, 2001. See *Wrigley v. State*, 248 Ga.App. 387, 546 S.E.2d 794 (2001). Petitioner filed a timely petition for certiorari in the Georgia Supreme Court, which petition was denied on July 16, 2001 (See Appendix B). Petitioner timely moved the Georgia Supreme Court to reconsider his petition for certiorari, and the Court denied said motion on July 27, 2001 (See

11/29/01 THU 17:33 FAX 402 342 5440 COCKLE PRINTING 009

Appendix C). This petition for a writ of certiorari is filed within the allowable ninety (90) days, and the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On May 8, 1997, the City of Atlanta Police Department was conducting "Operation Street Sweep," a program targeted at various neighborhoods around the city, the purpose of which was described by the Georgia Court of Appeals as "cleaning the streets of crime." *Wrigley v. State*, 546 S.E.2d 794, 797 (2001). This program involved a series of roadblock and checkpoint operations, set up at several different locations where Red Dog units, narcotics and vice squads, and patrol officers stopped traveling vehicles. At the location selected on Buford Highway, the checkpoint was conducted by the motorcycle squad.

11/29/01 THU 17:33 FAX 402 342 8440 COCKLE PRINTING 010

There were approximately twenty officers at this checkpoint. Petitioner was stopped at this checkpoint on Buford Highway, and was ultimately arrested for DUI.

Petitioner challenged the constitutionality of the checkpoint through a pretrial motion, but this motion was denied. At trial, a jury found Petitioner guilty of DUI and driving without a license on his person. Petitioner appealed his conviction to the Georgia Court of Appeals on several grounds, including the unconstitutionality of the checkpoint. Petitioner cited this Court's holding in *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000), which had been decided after his conviction, for the proposition that a checkpoint program conducted for the general purpose of crime control is proscribed by the Fourth Amendment. The Court of Appeals upheld Petitioner's conviction and the denial of his motion to suppress, finding that the overall program, Operation Street Sweep, was "aimed at cleaning the streets of crime," but that the conduct taking place at the Buford Highway checkpoint, standing alone from Operation Street Sweep, was constitutionally permissible. *Wrigley v. State*, 248 Ga.App. 387, 546 S.E.2d 794 (2001), Division 2. Mr. Wrigley sought to appeal this holding to the Georgia Supreme Court, but the Supreme Court denied his petition for a writ of certiorari. Due to the important federal constitutional question involved in this case, as well as the Court of Appeals' disregard of this Court's decision in *Edmond*, Mr. Wrigley petitions this Court for a writ of certiorari.

11/29/01 THU 17:34 FAX 402 342 5440 COCKLE PRINTING 011

REASONS FOR GRANTING THE PETITION

I. THE GEORGIA COURT OF APPEALS' DECISION IS FLATLY CONTRARY TO THIS COURT'S CONTROLLING PRECEDENT IN *CITY OF INDIANAPOLIS V. EDMOND*.

A. THE COURT OF APPEALS' DECISION IGNORES THIS COURT'S HOLDING THAT CHECKPOINTS CANNOT BE SET UP AS PART OF A PROGRAM WHOSE PRIMARY PURPOSE IS GENERAL CRIME CONTROL.

In *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000), decided while Wrigley's direct appeal was pending, this Court held that a checkpoint program set up for the general purpose of crime control is unconstitutional. The Georgia Court of Appeals found that the subject checkpoint was part of "Operation Street Sweep . [which] was a department-wide program aimed at cleaning the streets of crime." *Wrigley*, 546 S.E.2d at 797. This operation was aimed at the general interest in crime control, precisely the type of program disapproved by this Court to justify suspicionless checkpoints. *Edmond*, 531 U.S. at 39. Nevertheless, the Court of Appeals held that, "standing alone, the roadblock in this case was proper." *Wrigley*, 546 S.E.2d at 797. In spite of its acknowledgment that the aim of the overall program was general crime control, the Court of Appeals determined, based on the conclusion of one field officer participating in the roadblock, that the purpose of the individual roadblock was "checking for licenses and insurance cards." *Id.* The only evidence of this "purpose" was the testimony of the one field officer.

11/29/01 THU 17:34 FAX 402 342 8440 COCKLE PRINTING 012

Rather than focus its determination of the purpose of Operation Street Sweep at the programmatic level, as required by this Court in *Edmond*, the Court of Appeals relied solely on the opinion of the one field officer who testified. This method of inquiry was specifically condemned by this Court: "[W]e caution that the purpose inquiry in this context is to be conducted only at the programmatic level, and is not an invitation to probe the minds of individual officers acting at the scene." *Edmond*, 531 U.S. at 48. Thus, the Court of Appeals ignored this Court's direction, and refused to recognize the unconstitutionality of the checkpoint program in the instant case.

The Court of Appeals also noted that the *actions* of the officers at the roadblock were consistent with the "purpose" of checking licenses. *Wrigley*, 346 S.E.2d at 797. However, the actual conduct of the officers at the Buford Highway roadblock is an irrelevant factor in determining the primary purpose of the program. This Court has instructed lower courts to examine the underlying purpose of the roadblock program itself, even where the conduct of the individual officers at the roadblock, on its face, may appear perfectly proper. As stated by Justice O'Connor, writing for the majority, "[A] program driven by an impermissible purpose may be proscribed while a program impelled by licit purposes is permitted, even though the challenged conduct may be outwardly similar." *Edmond*, 531 U.S. at 47. Thus, a checkpoint program whose primary purpose is general crime control, where officers appear to be only checking licenses and insurance, is unconstitutional based on its impermissible programmatic purpose.

11/29/01 THU 17:34 FAX 402 342 5440 COCKLE PRINTING 013

B. A POTENTIALLY PERMISSIBLE *SECONDARY* PURPOSE OF THE ISOLATED CHECKPOINT DOES NOT UNDERCUT THE IMPERMISSIBLE PRIMARY PURPOSE OF THE CHECKPOINT PROGRAM.

In general, a search or seizure is ordinarily unreasonable in the absence of individualized suspicion or wrongdoing. *Chandler v. Miller*, 520 U.S. 305, 308, 117 S.Ct. 1295, 1298 (1997). This Court has suggested, in *Delaware v. Prouse*, 440 U.S. 648, 661, 99 S.Ct. 1291, 1304 (1979), that the "general interest in crime control" is not a justification for a "regime of suspicionless stops." This Court explained that, where officers are employing a checkpoint for the ordinary enterprise of investigating crimes, there is no reason to suspend the usual requirement of individualized suspicion. *Id.*

One field officer who participated in the Buford Highway checkpoint testified that his roadblock was conducted by the motorcycle squad and the DUI countermeasures team. Therefore, after ignoring the programmatic purpose of the operation, the Court of Appeals concluded that the presence of the DUI countermeasures team suggested "at least a secondary purpose of detecting drunk drivers," and, therefore, held the roadblock permissible. *Wrigley*, 546 S.E.2d at 797. This Court has, indeed, held that a checkpoint program set up for the *primary* purpose of traffic safety or detecting drunk drivers is permissible, so long as the roadblock operates under proper procedures. *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481 (1990); *see also Prouse*, 440 U.S. at 663. However, in *Edmond*, this Court specifically stated that a lawful *secondary* purpose could not

11/29/01 THU 17:34 FAX 402 342 5440 COCKLE PRINTING 014

justify an unlawful roadblock program whose primary purpose is general crime control. *Edmond*, 531 U.S. at 46. Justice O'Connor noted that, if officers were able to justify an impermissible crime control roadblock by citing its proper secondary purpose, "law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check." *Id.* The Operation Street Sweep program is exactly the type of program about which this Court warned in *Edmond*.

II. THE CONFLICT AMONG STATE COURTS REGARDING THE APPROPRIATE APPLICATION OF *EDMOND* TO NEARLY IDENTICAL FACTS SHOULD BE RESOLVED.

Two months prior to the Court of Appeals decision in the instant case, the Florida Court of Appeals handed down an opinion in *Davis v. State*, 788 So.2d 1064 (Fla. App. 2001), a case strikingly similar to the instant case. However, the Florida Court of Appeals held exactly the opposite of the Georgia Court of Appeals, basing its opinion on this Court's *Edmond* decision.

In *Davis*, the roadblock in question was set up as part of "Operation Safe Streets", a program in Tampa, Florida designed to "restore a sense of safety to the neighborhood by lessening the hazardous element associated with criminal activity." *Id.* at 1064. Like the instant case, "the trial court did not have the benefit of the *Edmond* decision at the time of the suppression hearing." *Id.* Also, like the instant case, a police officer participating in the roadblock testified at the motions hearing that the checkpoint was

11/29/01 THU 17:35 FAX 402 342 5440 COCKLE PRINTING 015

one component of an overall crime prevention operation, and was set up to check driver's licenses and registration. *Id.*

Unlike the instant case, the Florida Court of Appeals recognized that the appropriate purpose inquiry in this context was to be conducted at the programmatic level. *Id.* That court properly refused to "probe the minds of individual officers acting at the scene" in determining the purpose of the roadblock, and held that because the roadblock program was created to engage in general crime control, the roadblock was impermissible in accordance with *Edmond*. Thus, the Florida court correctly concluded that, despite the fact that the officers were checking licenses at the scene, the larger effort was "nothing more than a checkpoint program with a primary purpose 'to detect evidence of ordinary criminal wrongdoing.'" *Davis*, 788 So.2d at 1065.

Other states have examined roadblock scenarios since *Edmond*, applying the holding set out by this Court: *State v. Cardenas-Alvarez*, 25 P.3d 225 (N.M. 2001), *aff'g* 995 P.2d 492 (N.M. 1999) (border checkpoint approved); *State v. Lidster*, 747 N.E.2d 419 (Ill. App. 2001) (roadblock set up to seek information about a week-old hit-and-run was unconstitutional under *Edmond*); *Burns v. Commonwealth*, 541 S.E.2d 872 (Va. 2001) (roadblock to investigate recent murder approved, citing "emergency" exception suggested in *Edmond*); *Commonwealth v. Yastrop*, 768 A.2d 318 (Pa. 2001), *aff'g* 738 A.2d 1059 (N.Y. 2000) (DUI checkpoints upheld, distinguishing *Edmond*); *State v. Orr*, 745 N.E.2d 1036 (Ohio 2001), *aff'g* 729 N.E.2d 383 (2000), *cert. denied* ___ S.Ct. ___, 2001 (No. 01-253 U.S. Ohio) (Oct. 15, 2001) (system of driver's license checkpoints approved,

11/29/01 THU 17:35 FAX 402 342 5440 COCKLE PRINTING 016

citing dictum in *Edmond*); *People v. McIntosh*, 738 N.E.2d 787 (N.Y. 2000), *rev'd* 755 N.E.2d 329 (N.Y. 2001) (boarding bus and requesting identification akin to checkpoint, disapproved for purpose of drug interdiction, citing *Edmond*). However, only the *Davis* case, cited above, was decided on facts virtually identical to the case at bar. Although the Ohio Supreme Court upheld license checkpoints in *State v. Orr*, 745 N.E.2d 1036 (Ohio 2001), that case involved a program that was specifically designed "to identify and remove unlicensed drivers and drivers with suspended licenses from the roads." In contrast, the programs in both this case and in *Davis* were designed primarily for crime interdiction.

The importance of the resolution of conflicting interpretations by the state appellate courts on federal constitutional issues is a circumstance which especially invokes the "refereeing" and judicial policy-setting functions for which the writ of certiorari was designed.

CONCLUSION

The Georgia Court of Appeals has decided an important federal constitutional question in a way that conflicts with this Court's decision that roadblocks set up for the general purpose of crime control are unconstitutional. "Because the [Georgia Court of Appeals] decision is flatly contrary to this Court's controlling precedent, [this Court should] grant the [Petitioner's] petition for a writ of certiorari, and reverse" the decision of the Georgia Court

11/29/01 THU 17:35 FAX 402 342 5440 COCKLE PRINTING 017

of Appeals. *Arkansas v. Sullivan*, ___ U.S. ___, 121 S.Ct. 1876, 1878 (2001).

Respectfully submitted,

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11/29/01 THU 17:35 FAX 402 342 8440 COCKLE PRINTING 018